

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 852 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DR.K C DALAL

Versus

GUJARAT AGRICULTURAL UNI.

Appearance:

MR HB SHAH & Mr. PC Master for Petitioner
MR JR NANAVATI for Respondent No. 1
MR KS NANAVATI for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/02/98

ORAL JUDGEMENT

Learned advocates appearing for the petitioner and the respondents Nos. 1 and 2 are not present. Heard learned advocate Mr.K.S.Nanavaty for respondent No. 3.

2. This petition is preferred by an employee of the respondent No. 1 University. It appears that the

petitioner was serving as Research Scientist at Anand Campus of the University. However, considering the need for filling up the posts at Sardar Krushinagar (Banaskantha), under order dated 27th April, 1985, the petitioner was transferred as Professor of Agriculture (Botany) at Sardar Krushinagar (Banaskantha). Pursuant to the said order of transfer, the petitioner was relieved from Anand Campus on 31st May, 1985 and he reported for duty at Sardar Krushinagar on 1st June, 1985. On 11th June, 1985, the petitioner made a representation to the Vice Chancellor of the University to cancel the order of his transfer to Sardar Krushinagar and to transfer him at Anand. Said request was kept under consideration and on 6th January, 1986, an order was made transferring the petitioner as Research Scientist at Medicinal Aromatic Plants Scheme at Anand. It appears that after his transfer to Sardar Krushinagar, petitioner continued to occupy the residential quarter allotted to him while serving as Research Assistant at Anand. Under notice dated 13th June, 1985, the Director of Campus the respondent No. 3 herein being the competent authority gave notice to the petitioner to vacate the said quarter within two months from the date of his transfer i.e. on 31st July, 1985. On 30th July, 1985, the petitioner sent communication to the respondent No. 3 as well as the Chancellor and the Executive Engineer that he had made a request for his transfer to Anand and he, therefore, be permitted to retain his residential accommodation which request was apparently not accepted and under communication dated 2nd September, 1985, the respondent NO. 3 informed the petitioner that as and when he is transferred to Anand, his application for residential accommodation at Anand will be considered and that he was in unauthorized occupation of the residential accommodation and shall vacate the same within ten days from the date of receipt of the said notice. On 6th September, 1985, one Shri R. J. Patel informed the respondent No. 3 that the petitioner had applied for retransfer to Anand to the former Chancellor of the University and the matter was pending for consideration by the then Chancellor of the University and that the petitioner should be permitted to retain the residential accommodation till the decision is taken by the Chancellor. The letter is signed by Shri R. J. Patel as Chancellor of the University. It is apparent that Shri R.J. Patel was not the Chancellor of the University. Further, Mr. R. J. Patel has signed the communication at page 33 and the order at page 34 as the Registrar of the University. On 6th December, 1985, the petitioner was informed that the petitioner was in unauthorized occupation of the residential accommodation

and that he should vacate the residential accommodation. He was further informed that his occupation of the said accommodation since 1st August, 1985 was unauthorized and that the housing allotment committee in its meeting convened on 19th October, 1985 had decided to recover the market rent at the rate of Rs. 2450/- from the petitioner with effect from 1st August, 1985 till the petitioner handed over the possession of the said accommodation. On the same day, i.e. on 6th December, 1985, the Principal at Sardar Krushinagar was informed to deduct a sum of Rs. 2463/- from the salary of the petitioner being the amount of market rent and the water tax and service tax. On 13th December, 1985, Shri R. J. Patel, the Registrar sent a communication to respondent No. 3 to instruct the Executive Engineer of the Housing Allotment Committee not to take any action against the petitioner. On 6th January, 1986, the petitioner was transferred to Anand as Research Scientist as referred to hereinabove. On 29th January, 1986, the Administrative Officer issued notice upon the plaintiff to show cause why the proceedings under the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 should not be initiated against the petitioner. Feeling aggrieved, the petitioner has preferred this petition.

3. On perusal of the averments made in the petition, it is apparent that the petitioner's wife was serving at a College at Anand and his children were also studying at Anand. It was, therefore, not convenient to him to vacate the residential accommodation allotted to him by the University and he retained the occupation of the residential accommodation to suit his personal convenience. It is the claim of the petitioner that the petitioner's request for transfer to Anand was pending before the Vice Chancellor of the University and so long as his application was under consideration, he had right to occupy the residential accommodation at Anand. He has further relied upon the communication sent by the Registrar of the University instructing respondent No. 3 not to take any action against the petitioner. It is, therefore, the claim of the petitioner that neither he could have been asked to hand over the possession of the residential accommodation at Anand nor could he be said to be in unauthorized occupation of the said accommodation with effect from 1st August, 1985 and no market rent could have been recovered from the petitioner.

4. Mr. Nanavaty, the learned advocate has appeared for the Director of Campus, the respondent No. 3 herein and has submitted that pending this petition, the

petitioner has vacated the residential accommodation on 10th December, 1990 and has handed over the possession thereof to the Housing Allotment Committee. In that view of the matter, the impugned notice dated 29th January, 1986 would not survive and the petition in so far it challenges the notice dated 29th January, 1986 has become infructuous.

5. The allotment of the housing accommodation to the employees of the respondent-university is governed by the Rules known as Gujarat Agricultural Employees (Housing Accommodation) Rules, 1977 (hereinafter referred to as the " Rules"). Said Rules have come into force with effect from 1st April, 1978. Sub rule 11 of Rule 6 of the Rules has been substituted under Notification dated 11th September, 1984. The said Notification has been made effective from the date of the Resolution i.e. from 18th August, 1984. The Rules are part of the Statute framed by the University and are, thus, Statutory in nature. Copies of the Rules and the Notification are ordered to be taken on records of the matter.

6. Rule 3.1 of the Rules enumerates the class of persons who are eligible for housing accommodation. Rule 3.2 thereof requires that the employee who is allotted the housing accommodation shall pay the house rent as may be prescribed by the Board of Management. Under Rule 4.1 of the Rules, the Director of Campus is the ex-officio Chairman of the Housing Accommodation Committee. Rule 6 provides for conditions for allotment. Sub rule 1 (a) provides that the allotment shall be made according to the priority of the applications in the waiting list. Subrule 1 (b) thereof provides for priority of housing accommodation. Clause (iii) thereof provides for allotment to be made according to the station seniority. Subrule 6 thereof provides that the allotment shall be only for the period during which the allottee holds the post in the University at the place at which the accommodation is provided. Subrule 10A [added on 3rd February, 1979] provides for vacation of the accommodation by an allottee when required to do so by the Director of Campus or the competent authority as decided by the Vice Chancellor. Subrule 11 (I) of the Rules (as in force since 18th August, 1984) provides, inter-alia, that the University employee should be eligible to retain the accommodation for two months after transfer to the place out side the station. Subrule 11 (II) empowers the competent authority to grant permission to retain the residential accommodation beyond the period specified in Subrule 11(I) upto the period of six months on payment of twice the standard rent. It further

provides that the competent authority shall not allow this concession beyond the period stipulated. It enjoins upon the Director of Campus to issue demand notice showing the rent recoverable at the rates mentioned. Subrule 11 (III) provides, inter alia, that the occupation of the university accommodation beyond the period mentioned in subrule 11(II) should be considered as unauthorized occupation. It further provides that pending the initiation of the eviction proceedings, the rent worked out on the basis of the formula mentioned therein (market rent) should be recovered from the unauthorized occupant. It enjoins upon the Director of Campus to issue demand statement every month to the disbursing officer. Subrule 12 thereof provides, inter alia, for charging market rent for the period between the unauthorized retention and the date of actual vacation. Rule 9 empowers the housing allotment committee to allow the allottee to continue the occupation of the premises occupied by him previously in the event he is retransferred to a place within the period of authorized retention. Rule 13 makes the decision of the Housing Allotment Committee made under the Rules final and binding on the allottee.

7. On perusal of the Rules, it is apparent that the housing allotment committee is the competent authority under the Rules; an employee is entitled to retain the residential accommodation for two months from the date of his transfer; the housing allotment committee is empowered to permit further occupation for a period not exceeding six months by charging twice the standard rent; on failure of the allottee to hand over the residential accommodation as provided under the Rules, the allottee shall be liable to pay the market rent worked out by the Board of Management till he hands over the possession of the residential accommodation. In the present case, it is undisputed that the petitioner was transferred from Anand to Sardar Krushinagar and was relieved from his post at Anand on 31st May, 1985. Hence, the petitioner was entitled to retain the residential accommodation at Anand for the period from 1st June, 1985 to 31st July, 1985. The petitioner was duty bound to vacate and hand over the possession of the residential accommodation at Anand on or before 1st August, 1985 which the petitioner failed to do. It is apparent that the request made by the petitioner for permission to retain the said quarter beyond the period of two months was rejected and under communication dated 2nd September, 1985, the petitioner was called upon to vacate the residential accommodation within ten days. Therefore, upon the petitioner's transfer to Anand on 6th January, 1986, the petitioner

would have to make application for residential accommodation and he would be entitled to grant of such accommodation in accordance with his station seniority i.e. in accordance with the date of his application. Even after his transfer to Anand, the petitioner could not have continued in the residential accommodation occupied by him previously before 31st May, 1985. Hence, it is evident that the petitioner was in unauthorized occupation of the residential accommodation since 1st August, 1985 and he is duty bound to pay the market rent for the period of his unauthorized occupation. Under the Rules, it is the housing allotment committee which is the competent authority and the Director of Campus is the ex-officio Chairman of the said Committee. Thus, the Registrar is not an authority to decide upon the questions relating to the housing accommodation. In my view, therefore, the instructions issued by the Registrar in the name of the Chancellor are meaningless and are issued without the authority of law. Said communication, therefore, cannot lend support to the claim made by the petitioner.

8. In view of the above discussion, I am of the view that the housing accommodation committee is duty bound to recover the market rent from the employees who are found to be in unauthorized occupation of the residential accommodation. Be it noted that the petitioner herein has not challenged the correctness of the market rent fixed by the housing allotment committee as reflected in the demand notice dated 6th December, 1985.

9. In view of the above discussion, I do not find any merit in the dispute raised by the petitioner in the present petition. Petition is, therefore, dismissed. Rule is discharged. Interim relief granted earlier stands vacated. Parties shall bear their own costs.

Vyas